

File Number:
Merit Review3-D-A

RECEIVED JUL 1 2012

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300
Phone: (904) 366-0100

July 9, 2012

Date of Injury:
Employee:

Dear Ms. _____ :

This concerns your compensation case and your request for reconsideration received 05/11/2012.

We have evaluated the evidence submitted in support of your request for review. Your case has been reviewed on its merits under Title 5, United States Code, Section 8128, in relation to your application including supporting evidence. It is determined that the previous decision should be vacated. The reasons for this decision are outlined in the enclosure.

Therefore, the decision dated 05/20/2011 is vacated and your case is accepted for right rotator cuff tear and left hip bursitis.

Sincerely,



Alida V. Anderson
Senior Claims Examiner

Enclosure: Notice of Decision

PAUL FELSER
FELSER LAW FIRM, P.C.
POST OFFICE BOX 10267
SAVANNAH, GA 31412

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

NOTICE OF DECISION

Claimant Name:

ISSUE: The issue for determination is whether federal work factors caused, precipitated or aggravated the diagnosed conditions, thereby requiring that the prior decision be vacated.

REQUIREMENTS OF ENTITLEMENT: 20 C.F.R. § 10.605 through 10.609 outline the procedure for application and the Office's handling of requests for reconsideration. A claimant may obtain review of the merits of his or her claim by written request to the Office and by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. In your case, you provided new medical and factual evidence for review.

Furthermore, in order for a claim to be accepted under the Federal Employees' Compensation Act, the component of fact of injury must be established by the medical evidence of record. To establish personal injury in an occupational injury case, the medical evidence must establish the existence of a medical condition caused or aggravated by factors of employment. Secondly, the medical evidence must also support a causal relationship between the injury and federal work factors in order to be compensable.

BACKGROUND: You are employed as a rural carrier by the

On you filed a notice of occupational injury alleging that lifting/twisting/closing LLV door repeatedly had caused pain to your left hip and a torn rotator cuff.

On 11/01/2010 you had a right shoulder arthroscopy with debridement of the labrum; arthroscopic subacromial decompression; arthroscopic incision distal clavicle; and mini-open rotator cuff repair.

After proper development, the claim was denied on 01/18/2011 because you had not established fact of injury.

You requested a review of the written record by the Branch of Hearings and Review (BHR). On 05/20/2011, the BHR affirmed the Office's decision but modified the reason of the denial to failure to establish causal relationship.

On 05/11/2012 you requested reconsideration through your representative. On 05/24/2012 your employer was provided an opportunity to comment on the application for reconsideration.

DISCUSSION OF EVIDENCE: Our office received the following new documents in support of, or pertaining to, your reconsideration:

- Medical reports from , M.D. dated 08/23/2011, 09/21/2011, 01/17/2012, 03/08/2012, 04/17/2012, 04/26/2012
- Letter from , M.D. , dated 09/01/2011

- Your representative's letter dated 05/11/2012
- letter of challenge dated 06/12/2012
- Your statement received 06/26/2012
- Duties and requirements of a

The 08/23/2011 CA-17 indicated that you had a right rotator cuff tear and that you were totally disabled.

The 09/01/2011 letter from Dr. , a rheumatologist, provided diagnoses of: right shoulder arthritis, hip arthritis, back pain, right carpal tunnel syndrome and cervical degenerative disc disease. Although he referenced testing, there were no diagnostic tests, chart notes nor dates of examination to support the compensability of the additional conditions. Dr. stated: "What she has troubles with that relate to her work that are related to the diagnosis we have made is that she has a problem with closing the driver's side door when she is mail and she does it 50 times a day."

The 09/21/2011 progress report from Dr. mentioned shoulder and back problems. You were being seen by Dr. for the shoulder and Drs. for the back. Dr. stated that the right shoulder rotator cuff tear was directly related to federal work. He stated that you were "driving an old 1989 model truck with a heavy door and having to open and close that door forty times a day... [You] started driving in October and developed a shoulder problem in December." It was his opinion that the back problems were directly related to opening and closing the LLV door. No secure diagnosis for the back problems was provided.

The 01/17/2012 office note from Dr. indicated that you were unable to work full duty performing repetitive motion or having shoulder pressure. The 03/08/2012 CA-17 restricted you from performing full duties.

The 04/17/2012 office note included an addendum dated 04/26/2012 from Dr. noting that work duties of lifting heavy parcels and lifting the door latch open and closed caused and/or contributed to the development of previously diagnosed work related conditions. We have a 10/12/2010 treatment note where left hip bursitis is diagnosed and a CA-17 dated 11/22/2010 diagnosing "hip pain." Thus, the left hip and right shoulder were the two conditions treated and diagnosed by Dr.

Your representative stated that causation of the diagnosed conditions was established based on new medical reports.

The argued in their 06/12/2012 letter that the timing of the claim was suspect because it was filed after you were asked to document extended time off to take care of your mother. The fact that you work a paper route every day was brought up as well. However, there are no independently obtained findings of unusual activities related to caring for your mother. The file contains a statement from the newspaper supervisor confirming that the paper route involves the use of the left arm as opposed to the right arm/shoulder with a right-drive LLV.

In your statement, you emphasized that the injury was due to work duties and not to personal activities

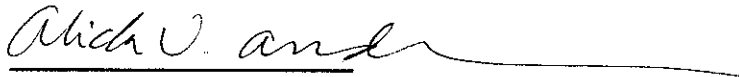
BASIS FOR DECISION: Your case was reviewed in full.

The Employees' Compensation Appeals Board has held that the medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.¹ The Board has also continually held that the mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of causal relation based upon specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.²

In the present case, the decisive reports were those of Dr. . The relationship of occupational work factors to your right shoulder and left hip injuries are established by the 10/12/2010, 09/21/2011 and 04/26/2012 reports. Dr. provided a detailed description of the job duties that caused the conditions; performed examinations and testing; and provided the objective findings to support his opinion.

Although cervical, back, and carpal tunnel problems are mentioned by Dr. , you did not claim these conditions on the CA-2 and they are not objectively supported.

CONCLUSION: The decision dated 5/20/2011 shall be VACATED, as the evidence of record establishes that right rotator cuff tear and left hip bursitis are causally related to work duties.



Alida V. Anderson
Senior Claims Examiner
July 9, 2012

¹ Ruby I Fish, 46 ECAB ____ (Docket No. 93-1779, issued November 30, 1994).

² Patricia Bolleter, 40 ECAB ____ (1988); Susan M. Biles, 40 ECAB ____ (1988) [88-1384; issued January 11]; Danita E Lindsey, 40 ECAB ____ (1989) [88-1460 issued January 30].